

S. 1961 and H.R. 4024: Legislative Responses to a Chemical Storage Facility Spill

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Summary

In January 2014, an estimated 10,000 gallons of 4-methylcyclohexanemethanol (MCHM) and other chemicals leaked from a bulk aboveground storage tank at a chemical storage facility located upstream from the intake pipes of the water treatment plant serving Charleston, WV, and nearby counties. In the wake of the resulting contamination of this large public water supply, Congress has undertaken oversight and is considering legislative options.

The chemical storage tank at the center of the West Virginia incident appears to not have been subject to regulation under various federal or state laws aimed at protecting water resources from chemical releases. Oversight hearings by House and Senate committees began within a month to review the event, and to identify policy issues regarding the federal and state roles in regulating chemical facilities and whether legislation might be warranted. In further response to the spill, S. 1961, the Chemical Safety and Preparedness Act, was introduced on January 27, 2014, and H.R. 4024, the Ensuring Access to Clean Water Act of 2014, was introduced on February 10, 2014.

This report describes and analyzes H.R. 4024 and S. 1961, as reported. The bills share a number of broadly similar provisions—both would direct states or the Environmental Protection Agency (EPA) to establish programs to prevent and respond to releases from chemical storage facilities (H.R. 4024) or tanks (S. 1961) located near drinking water sources—but they take different approaches to doing so: S. 1961 would make programmatic changes by amending the Safe Drinking Water Act (SDWA), while H.R. 4024 would amend the Clean Water Act (CWA).

The bills would require states with primary enforcement responsibility for public water systems (S. 1961), or states with primary authority to issue CWA discharge permits (H.R. 4024), to establish a regulatory program for chemical storage tanks or facilities, and would have EPA establish programs in other states. Only S. 1961 would require EPA to establish and administer the program in primacy states that refrain from doing so. H.R. 4024 would require EPA or states to carry out a “chemical storage facility source water protection program” within one year of enactment, while S. 1961 would give EPA or states two years to establish a “chemical storage tank surface water protection program.”

Both bills include similar program requirements: (1) a state inventory of chemical storage facilities (H.R. 4024) or tanks (S. 1961); (2) regular inspections; and (3) requirements for facilities or tanks (including construction standards, leak detection, emergency response and communication plans, employee training, etc.). Both bills would authorize EPA or a state to issue corrective action orders to enforce the requirements of the legislation, and to recover response costs from facility or tank owners or operators. The bills would require pre-transfer inspections of facilities or tanks, and require information about stored chemicals and response plans to be shared with local water systems. The bills define “chemical” and “storage tank” differently, but would give states or EPA broad discretion in determining the scope of covered facilities or tanks.

Both bills contemplate creating state programs to provide for oversight and inspection of covered chemical storage facilities or tanks, but neither would provide financial resources to assist states in establishing or administering the programs. The pending bills broadly present one approach among an array of possible approaches that have received some discussion. Some Members of Congress and stakeholders have suggested that a federal legislative response to the West Virginia spill is premature, saying that they favor allowing states to take the lead in determining the need for and details of programs to address chemical storage tanks and facilities within their borders.

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Introduction

On January 9, 2014, officials in West Virginia discovered that an estimated 10,000 gallons of the chemical 4-methylcyclohexanemethanol (MCHM), mixed with a small amount of glycol ethers known as PPH, leaked from a 46,000-gallon aboveground storage tank at a chemical storage facility owned by Freedom Industries on a site northeast of Charleston, WV. A substantial amount of the chemical was released into the Elk River, a tributary to the Kanawha River. Moving downriver, an unknown amount of the chemical plume entered intake pipes of a water treatment facility located 1.5 miles from the chemical storage facility, causing the issuance of state and federal emergency declarations and prompting the local water utility to issue a “do not use” order that directed more than 300,000 commercial and residential customers in nine counties of West Virginia not to drink or use tap water for any purpose other than flushing toilets.¹

Multiple responses followed. Federal, state, and local emergency response, public health, and environmental officials assembled resources to sample and test for the chemical at the treatment plant and in the water distribution system. Officials sought to obtain and evaluate information about toxicity and potential hazards in order to understand the impact of the chemical contamination. Emergency officials delivered and made water supply available to affected citizens. Recommendations of the U.S. Centers for Disease Control and Prevention (CDC) were used to determine a “safe level” of the chemicals² and when the ban on the use of tap water could be lifted. It was fully and finally lifted on January 18, 2014. The U.S. Chemical Safety Board began an investigation of the incident to determine what happened and how to prevent a similar incident in the future.³

Public and congressional interest in the incident has been significant. Oversight hearings by House and Senate committees began within a month to review the event and to identify policy issues regarding the federal and state roles in regulating chemical facilities and whether legislative remedies may be warranted. Several concerns emerged from these discussions:

- Many have called for more robust inspections and controls at bulk chemical storage and manufacturing facilities and efforts to enhance inspection, spill containment, leak detection, and training requirements for personnel who manage activities at such facilities.

¹ The January 14, 2014, announcement of the presidential emergency declaration for the spill is available at <http://www.fema.gov/news-release/2014/01/10/president-obama-signs-west-virginia-emergency-declaration>.

For information on presidential declarations and federal disaster assistance, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Francis X. McCarthy.

For a review of federal response authorities and procedures for chemical spills, see CRS Report R43251, *Oil and Chemical Spills: Federal Emergency Response Framework*, by David M. Bearden and Jonathan L. Ramseur.

² CDC determined that a maximum level of 1 part per million (ppm) of MCHM in drinking water would be protective of public health. The “do not use” ban remained in effect until MCHM levels were non-detectable (less than 0.01 ppm, or 10 parts per billion (ppb)) at all designated sampling locations throughout the distribution system. However, CDC also recommended extra precaution by pregnant women, even after the “do not use” ban was lifted.

³ Information on the Chemical Safety Board investigation of the Freedom Industries chemical release is available on the CSB website, <http://www.csb.gov/investigations/>.

- Although underground storage tanks (USTs) are extensively regulated,⁴ relatively few federal regulations apply to aboveground storage tanks.⁵ For example, federal requirements for prevention and preparedness for releases from aboveground tanks apply to tanks containing oil, but do not apply to tanks storing hazardous substances or tanks containing non-hazardous substances or chemicals such as those at the Freedom Industries facility.⁶ There has been dispute over whether the tanks in question were subject to federal or state regulatory requirements that they be structurally sound and have adequate secondary containment, and whether existing requirements were effectively enforced.
- Little was known about the toxicity of the chemicals that leaked, which complicated efforts by the water utility, emergency responders, and other officials to assess risks to the affected public. Questions were raised about the adequacy of requirements for chemical testing of MCHM and PPH, as well as thousands of other chemicals used in commerce throughout the country.
- Facilities that store hazardous chemicals in excess of threshold quantities or experience a release in excess of established quantities are required by federal law to report and notify state and local emergency response personnel. However, there are no requirements that nearby or downstream water suppliers be notified. Rather, it is assumed that state and local emergency responders would notify affected entities and individuals.⁷

⁴ However, federal UST requirements apply to tanks storing petroleum and “regulated substances” (i.e., substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 101(14), excluding hazardous wastes (42 U.S.C. 9601(1)). Thus MCHM currently is not regulated under the UST program. Federal requirements for USTs comprise Subtitle I of the Solid Waste Disposal Act, also called the Resource Conservation and Recovery Act. 42 U.S.C. §§6991-6991m.

⁵ States have had the predominant role in regulating aboveground storage tanks (ASTs) that contain chemicals, and various states have developed AST programs that include many comparable provisions to the UST regulatory programs.

⁶ Clean Water Act, Section 311(j)(1) [33 U.S.C. 1321(j)(1)] directs the President to promulgate spill prevention, containment, and removal regulations for discharges of oil and hazardous substances to surface waters. An executive order delegated this authority to EPA, which issued oil Spill Prevention, Control, and Countermeasure (SPCC) regulations for non-transportation onshore and offshore facilities in 1973. EPA has not issued analogous regulations that apply to hazardous substances. In addition, Section 311(j)(5) directs the President to issue regulations requiring tank vessel and facility owners or operators to prepare and submit detailed response plans for responding to worst-case discharges of oil or a hazardous substance. Facilities subject to regulations include onshore facilities that, because of their location, could “cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.” EPA promulgated Facility Response Plan regulations for non-transportation onshore oil facilities in 1994. EPA has not issued similar regulations for facilities storing hazardous substances. Although both of these CWA sections direct the President to issue rules that address hazardous substances, if EPA had issued such regulations, they would apply only to materials defined as hazardous substances, which currently do not include MCHM. (However, for chemical spills, CERCLA authorizes the federal government to take actions to respond to a release of a hazardous substance, or a release of a pollutant or contaminant (such as MCHM), into the environment that may present an imminent and substantial danger to public health or welfare.)

For information on the SPCC regulations for oil, see CRS Report R43306, *Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Legislation in the 113th Congress*, by Jonathan L. Ramseur.

⁷ The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 requires the owner or operator of a facility to notify state and local emergency response officials (and local fire departments) of certain hazardous chemicals present at the facility above specific quantities. EPCRA also requires notification of state and local emergency response officials in the event of a release of certain designated chemicals from the facility above specific quantities. See CRS Report RL32683, *The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary*, by David M. Bearden.

- Many have called for more effective accident prevention, encompassing siting and design of chemical storage tanks, as well as inspections to safeguard against structural failure. Similarly, some now recommend that federal environmental laws should give greater attention to protecting sources of water against pollution and contamination.

Some of these concerns are reflected in two bills that have been introduced in response to the chemical spill: S. 1961, the Chemical Safety and Preparedness Act, introduced by Senator Manchin on January 27, and H.R. 4024, the Ensuring Access to Clean Water Act of 2014, introduced by Representative Capito on February 10. This report describes and analyzes S. 1961, as reported, and H.R. 4024. The bills have a number of core elements and provisions in common—both would seek to create a new chemical release prevention and response program to address gaps highlighted by the West Virginia spill—but they take different approaches to doing so. S. 1961 would make programmatic changes by amending the Safe Drinking Water Act (SDWA), while H.R. 4024 would amend the Clean Water Act (CWA).

Table A-1 in the **Appendix** to this report provides a comparison of the two bills.

S. 1961

On July 31, 2014, the Senate Committee on Environment and Public Works reported S. 1961 (S.Rept. 113-238), with an amendment in the nature of a substitute. While basic program elements remain similar to the bill as introduced, the reported bill includes new terms, definitions, and various added details and clarifications. The following discussion reviews the Senate bill, as amended.

S. 1961 would amend the SDWA,⁸ adding a new “Part G” to require states or the Environmental Protection Agency (EPA) to carry out a chemical storage tank surface water protection (CSTSWP) program to protect public water systems from releases of chemicals from storage tanks. The bill would give states or EPA two years to establish a CSTSWP program that provides for oversight and inspection of chemical storage tanks, including tanks located in source water areas identified through the SDWA source water assessment program.⁹ Although S. 1961 would establish the tank program under the SDWA, a state would determine which state agency would implement the program.

The chemical storage tank program would be administered by states that have primary enforcement responsibility for public water systems (i.e., primacy¹⁰), or by EPA if either (A) a state does not have primacy or (B) a state has primacy but expressly refrains from administering

⁸ 42 U.S.C. §300f et seq. The SDWA comprises Title XIV of the Public Health Service Act.

⁹ SDWA Section 1453 (42 U.S.C. §300j-13), added by the 1996 SDWA amendments (P.L. 104-182), requires states to conduct an assessment of sources of drinking water for public water systems in the state to identify potential sources of contamination and to determine the susceptibility of water systems in the delineated area to these contaminants.

Contaminants covered in the state source water assessment programs (SWAPs) include contaminants regulated, or for which monitoring is required, under the SDWA, as well as contaminants that the state determines present a threat to public health.

Funding: States were authorized to use a portion of their drinking water state revolving loan fund (DWSRF) capitalization grant for FY1996 and FY1997 to conduct source water assessments. SDWA §1452(k)(1)(C); 42 U.S.C. §300j-12(k)(1)(C).

¹⁰ All states except Wyoming have been delegated primary enforcement and oversight responsibility (i.e., primacy) for the public water system supervision (PWSS) program pursuant to SDWA §1413 (42 U.S.C. §300g-2). EPA would be required to implement a chemical facility program in Wyoming, in most Indian lands, in the District of Columbia (defined as a state in SDWA), and in states that choose not to implement a CSTSWP program.

and implementing a program. Primacy states choosing not to establish a program would be required to notify EPA of their decision no later than two years after enactment.

S. 1961 would require EPA to issue guidance and provide other technical assistance to assist states in implementing the bill's requirements. However, the bill would not authorize funding to support state administration of the CSTSWP program.

The bill delineates minimum elements for chemical storage tank programs, including requirements for tanks and tank owners and operators (such as construction and leak detection, inspections, and emergency response plans that provide for immediate notification to public water systems of chemical releases) and requirements for states (including tank inspections and a comprehensive tank inventory).

S. 1961, as introduced, did not include a definition for the term "chemical." The reported bill defines "chemical" to mean a chemical substance that is

- identified as a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund);
- subject to emergency planning or reporting requirements of the Emergency Planning and Community Right-To-Know Act (EPCRA);¹¹ or
- defined as a contaminant under SDWA Section 1401(6).¹²

The introduced bill focused on chemical storage facilities; however, as reported, S. 1961 changes the focus from "facilities" to "tanks." Under the amended bill, "covered chemical storage tanks" would include onshore, fixed, aboveground bulk chemical storage containers (and related piping and appurtenances) or a combination of containers from which a chemical release would pose a risk of harm to a public water system. This change in scope from facilities to tanks, specifically, may add clarity and certainty as to what exactly would be subject to regulation under the legislation.¹³ Additionally, a focus on "tanks" may make any new requirements more compatible with existing state aboveground storage tank regulatory programs.

The bill excludes from the definition a tank or container that is subject to regulations under Clean Water Act Section 311(j)(1).¹⁴ In addition, S. 1961 gives states or EPA broad authority to adopt additional exclusions based on substantially similar federal or state laws or based on a determination that the tank "would not pose a risk of harm to a public water system."

¹¹ The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 establishes various planning and reporting requirements applicable to facilities at which certain hazardous chemicals or extremely hazardous substances are present above specific threshold quantities. For purposes of EPCRA, "hazardous chemicals" are the body of chemicals that meet the regulatory criteria promulgated by the Occupational Safety and Health Administration in 29 C.F.R. Section 1910.1200(c), and extremely hazardous substances are a separate body of specific chemicals designated in regulation promulgated by EPA in 40 C.F.R. Part 355, Appendix A and Appendix B. EPA is responsible for designating threshold quantities under EPCRA for both hazardous chemicals and extremely hazardous substances. See CRS Report RL32683, *The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary*, by David M. Bearden.

¹² SDWA Section 1401(6) defines the term "contaminant" to mean "any physical, chemical, biological, or radiological substance or matter in water."

¹³ Also, various proposed requirements, such as those regarding design and construction standards, may be more clearly defined and, thus, more easily addressed, by owners and operators when applied to tanks (for which industry standards exist), rather than facilities.

¹⁴ See *supra* note 5.

Under the bill, CSTSWP programs must provide for oversight and inspection of tanks and contain the following minimum requirements:

- *Covered chemical storage tank requirements* including design, construction, and maintenance standards; leak detection; spill and overfill control; inventory control for promptly determining the quantity of chemicals released in the event of a spill; an emergency response and communication plan (including procedures for immediately notifying relevant water systems, and state and local emergency response officials, as required by EPCRA); training and safety plan; tank integrity inspections; corrosion protection; and financial responsibility requirements.¹⁵
- *Inspections of tanks:*
 - high hazard tanks—annually by a certified inspector for the owner or operator;¹⁶
 - tanks identified in a source water assessment area—at least once every three years for facilities; and
 - other tanks—every five years.
- *Comprehensive inventory* of covered facilities in the state.

Proposed Section 1472(d) would require CSTSWP programs to be implemented and enforced in accordance with SDWA broadly, thus making the bill's requirements subject to federal enforcement authorities (including civil penalties),¹⁷ any monitoring or recordkeeping requirements EPA may establish by regulation,¹⁸ judicial review,¹⁹ citizens' civil actions,²⁰ EPA general regulatory authority,²¹ and other provisions. Relatedly, a tank program and associated requirements would be considered a part of the national primary drinking water regulations for purposes of state primary enforcement responsibility.²² The substitute amendment to S. 1961 added Section 1472(g) to clarify that state actions regarding the administration of a CSTSWP program would not affect state primacy for other SDWA programs.

Among other provisions, the Senate bill would authorize EPA or a state to issue corrective action orders (proposed Section 1473), and would make facility owners or operators liable for costs

¹⁵ Various proposed program requirements broadly parallel many of the requirements for underground storage tanks (USTs) under Subtitle I of the Solid Waste Disposal Act, also called the Resource Conservation and Recovery Act, 42 U.S.C. §§6991-6991m. However, the framework in Subtitle I differs fundamentally from the proposed bills, in that the UST provisions in current law establish a federal regulatory program with authority for states to administer their own UST program in lieu of the federal program—with EPA approval and grant assistance. In contrast, under the pending bills, states generally would be the primary regulators and would determine the scope and details of their programs.

¹⁶ The bill does not define or provide criteria to determine what would be considered a “high hazard covered chemical storage tank,” but it would require the state or EPA to develop a list of such tanks within two years of enactment.

¹⁷ SDWA Section 1414 (42 U.S.C. §300g-3). Relatedly, Section 2(c) of S. 1961 would amend SDWA enforcement provisions (Section 1414(i)) to make the new Part G an “applicable requirement” under the SDWA, and would make other conforming amendments.

¹⁸ SDWA Section 1445 (42 U.S.C. §300j-4).

¹⁹ SDWA Section 1448 (42 U.S.C. §300j-7).

²⁰ SDWA Section 1449 (42 U.S.C. §300j-8).

²¹ SDWA Section 1450(a) [42 U.S.C. §300j-9(a)] authorizes the EPA Administrator “to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.” The SDWA is Title XIV of the Public Health Service Act.

²² State primary enforcement responsibility provisions are contained in SDWA Section 1413 (42 U.S.C. §300g-2).

incurred by EPA or a state for response actions taken under the new Part G (proposed Section 1474). Proposed Section 1745 would prohibit the transfer of a facility unless an inspection is conducted and any necessary measures are taken to address the inspection results.

Under proposed Section 1476, a state or EPA would be required to provide to public water systems, on request, information maintained on emergency response plans and chemical inventories for chemical storage tanks within the same watershed as the water system. EPA or the state would also be required to provide to public water systems, on request, existing information on the potential toxicity of stored chemicals that EPA or the state deems relevant to evaluate the risk of harm to water systems, and safeguards that can be taken to detect or limit the impacts of a release of stored chemicals. Primacy states would be required to submit a copy of emergency response plans to EPA and the Department of Homeland Security (DHS). In states where EPA administered the program, EPA would be required to submit a copy of emergency response plans to the state and DHS.

S. 1961 would authorize, but not require, public water system owners or operators to commence—or to petition EPA to commence—a civil action for equitable relief to address any activity or facility that may present an imminent and substantial endangerment to the health of persons supplied by the water system.²³

H.R. 4024: Similarities and Differences

The House measure, H.R. 4024, which would establish a new Title VII in the CWA, is similar to the Senate bill in many respects. For example:

- Broadly similar to S. 1961, H.R. 4024 would require EPA or states to carry out a chemical storage facility source water protection program. The purpose of the program in the House bill is to protect navigable waters that states have designated for use as domestic water sources. (S. 1961 would require states or EPA to administer a chemical storage tank surface water protection program aimed at protecting public water systems.)
- Minimum requirements for state programs are very similar to those in S. 1961, although the Senate bill would require inspection of covered chemical storage tanks, while the House bill calls for inspection of aboveground storage tanks at covered facilities. S. 1961 would require annual inspections for “high hazard” storage tanks (the term is not defined); the House bill has no similar provision.
- EPA would be authorized to provide technical assistance to a state carrying out the program (but EPA is not required to issue guidance and provide technical assistance, as in S. 1961). Neither bill directs EPA to issue regulations²⁴ or requires states to submit their programs to EPA for review and approval.
- Neither bill explicitly provides a formal sanction or consequence if a state fails to carry out a chemical storage facility source water protection program.
- As with S. 1961, under H.R. 4024, EPA or a state would be authorized to issue a “corrective action order” to require the owner or operator of a covered chemical facility to carry out requirements of the title. Likewise, the owner or operator of a

²³ Section 2(b) would amend SDWA emergency powers, Section 1431 (42 U.S.C. §300i), to provide this authority.

²⁴ However, both the SDWA and CWA authorize EPA to prescribe regulations as are necessary to carry out functions under the act. 42 U.S.C. §300j-9(a)(1) (SDWA) and 33 U.S.C. §1361(a) (CWA). Neither bill would preclude EPA from issuing rules to implement the legislation. S. 1961 would require implementation in accordance with the SDWA.

public water system may commence a civil action in court to address “any activity or facility” that may present an imminent and substantial endangerment to the health of persons supplied by the water system. Or the public water system may petition EPA or the state to commence a civil action or issue an order. Procedures for EPA to respond to such a petition are specified.

- Paralleling S. 1961, under H.R. 4024 the owner or operator of a covered chemical storage facility shall be liable to EPA or a state for costs of a response action under the proposed new CWA Title VII. However, neither bill explicitly authorizes a response action relating to the release of a chemical; thus it is unclear to what the cost recovery provision refers. (EPA’s ability to initiate a response action would be dependent upon the availability of appropriations.)
- The bills include comparable provisions regarding transfer of ownership of a covered chemical storage facility or tanks. (S. 1961 would allow one year, rather than 30 days, to address the results of a pre-transfer inspection, and specifies criteria for qualifying inspections.)
- The bills also include similar provisions requiring a covered chemical storage facility/tank owner or operator to prepare an emergency response and communication plan, but only S. 1961 explicitly requires procedures for giving immediate notice of a release to relevant water systems. Both bills would require EPA or a state to provide a copy of the plan to neighboring water system operators, EPA (if the plan was submitted to a state), and the Secretary of Homeland Security. (Under S. 1961, if EPA administered the program, EPA would be required to provide the emergency response plans to the state.) Provisions are included to protect sensitive or security-related information in the plan. While both bills provide that an inventory of each chemical held at a covered chemical storage facility be shared with public water systems, neither bill requires that the inventory be updated to reflect changes in the facility’s operation, or types or amounts of chemicals stored there. (S. 1961 specifies that EPA or a state would be required only to provide response plans, chemical inventories, and other information to a public water system on request.)
- Both bills allow a state to adopt standards regarding chemical storage facilities or tanks that are more stringent than minimum requirements in the legislation. H.R. 4024 explicitly allows a state to adopt or enforce standards regarding chemical storage facilities that are more stringent than minimum requirements in the legislation. This provision would conform the bill to CWA Section 510, which allows states to adopt or enforce water pollution abatement requirements more stringent than those specified in the CWA. S. 1961 specifies that the bill’s requirements are to be implemented in accordance with the SDWA, and makes conforming amendments to SDWA Section 1414(e), which provides that nothing in the SDWA diminishes the authority of a state to adopt or enforce any law or regulation respecting drinking water regulations or public water systems.

Despite many broad similarities between the bills, H.R. 4024 does contain numerous differences from the Senate bill. Selected differences are highlighted below.

- First, as noted above, the purpose of the program in H.R. 4024 is to protect navigable waters that states have designated for use as domestic water sources. The use of the phrase “navigable waters” in the bill derives from the basic jurisdictional reach of the CWA, which is “navigable waters”—defined in the act

to mean “the waters of the United States, including the territorial seas.”²⁵ H.R. 4024 applies to a release from a chemical storage facility that poses a risk to “a navigable water that is designated for use as a domestic water supply.” Under the CWA, states adopt water quality standards, which include designated use or uses for water bodies in the states (such as public water supply, recreation, or industrial water supply) and criteria to support the designated uses by setting acceptable upper limits on pollutants in the waterbody. The bill is thus concerned with protecting waters designated by states for use as public water supply—typically the highest and most protective use that a state adopts—but not other waters that also could affect public health and welfare. For example, many state standards designate waters for fish consumption, or water contact recreation (swimming and fish), uses that can result in public exposure to and consumption of water that could be affected by a chemical facility release just as easily as a water designated for domestic water supply.

- Second, while both bills call for the new program to be carried out by EPA or by a state that exercises primary enforcement responsibility for the underlying act, that means different things under the SDWA and CWA. H.R. 4024 would require that the new chemical storage facility program be carried out by states that have been delegated primary authority to issue CWA discharge permits. Forty-six states are authorized by EPA to implement CWA responsibilities that include adopting water quality standards, issuing discharge permits, conducting water quality monitoring, and enforcing the law. In the remaining states (Idaho, Massachusetts, New Hampshire, and New Mexico), plus the District of Columbia and most U.S. Territories, EPA retains core CWA responsibilities such as issuing permits, and it would be required to carry out the program detailed in H.R. 4024. As discussed above, S. 1961 would apply to states that have primary enforcement authority for public water systems under the SDWA: EPA would implement programs in Wyoming, the District of Columbia, and most Indian lands.
- Third, only S. 1961 would direct EPA to implement a program in a primacy state that refrains from establishing one. H.R. 4024 includes no similar requirement or explicit authority.
- Fourth, the bills use different terms and definitions for “storage tank.” H.R. 4024 defines “aboveground storage tank” to mean a container at a covered chemical storage facility located on or above ground with fluid capacity in excess of 1,100 gallons, or a tank that is greater than 500 gallons capacity and is located within 500 feet of a navigable water that is designated for domestic water supply. S. 1961 includes a definition for “covered chemical storage tank,” but does not exclude any tanks based on storage capacity or distance from surface water; such determinations would be left to each state or EPA. Both bills would exclude tanks (S. 1961) or facilities (H.R. 4024) subject to spill prevention, containment, and removal measures under CWA Section 311(j)(1), which would exclude tanks or

²⁵ CWA Section 502(7); 33 U.S.C. §1362(7). The same definition of navigable waters applies to all of the programs and regulatory requirements of the CWA, meaning that it is central to determining the regulatory scope of the law. Two Supreme Court rulings have narrowed the law’s geographic reach, creating considerable uncertainty about waters that are regulated or not. On March 25, 2014, EPA and the Army Corps of Engineers proposed a regulation in response. For background, see CRS Report RL33263, *The Wetlands Coverage of the Clean Water Act (CWA): Rapanos and Beyond*, by Robert Meltz and Claudia Copeland, and CRS Report R43455, *EPA and the Army Corps’ Proposed Rule to Define “Waters of the United States,”* by Claudia Copeland.

facilities storing oil. Both bills also would authorize states or EPA to establish other exclusions.

- Fifth, the bills define “chemical” differently. The House bill defines “chemical” to mean “any substance or mixture of substances.” The proposed definition differs from and is broader than definitions in other laws,²⁶ and interpreting it could raise questions such as whether it is intended to include a substance such as oil, which is subject to separate provisions in CWA Section 311. S. 1961 includes a three-part definition of “chemical,” focusing on regulated hazardous chemicals and substances,²⁷ but also encompassing the SDWA definition of “contaminant.”
- Sixth, H.R. 4024 directs EPA to survey and report on state programs and regulations developed to implement the requirements of the legislation.
- Seventh, the House bill provides for civil penalties, not to exceed \$15,000 per day, for violation by an owner or operator of a covered chemical storage facility of a requirement or an order issued by EPA or a state pursuant to the legislation. The stated penalty amount is less than the general civil penalty provision in Section 309(d) of the CWA, which specifies not to exceed \$25,000 per day for each violation of the act.²⁸ S. 1961 would make the bill’s requirements subject to existing SDWA enforcement provisions, including Section 1414(b), which authorizes EPA to bring a civil action in the appropriate U.S. district court to require compliance with any applicable SDWA requirement or with an administrative compliance order. These SDWA civil penalties may not exceed \$25,000 for each day the violation occurs.
- Eighth, the requirements of S. 1961 would be implemented and enforced in accordance with the underlying statute (SDWA). The House bill contains no similar provision.

Conclusion

The spill from chemical storage tanks in West Virginia has generated considerable debate over the current state of regulation of such facilities, at both the federal and state level. As Congress considers possible legislative responses, multiple approaches may emerge.

Both of the bills discussed in this report contemplate creating state-led programs to provide for oversight and inspection of covered chemical storage facilities or tanks. Neither bill would require EPA to issue regulations or limit state authority to set stricter requirements. A key difference is that S. 1961 would require the federal government to carry out a program in the event that a state with primary enforcement authority does not establish a program. Additionally,

²⁶ For example, the Toxic Substances Control Act (TSCA) defines “chemical substance” as “any organic or inorganic substance of a particular molecular identity, including—(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and (ii) any element or uncombined radical.” The TSCA definition provides several exclusions, including any mixture and pesticides as defined in the Federal Insecticide, Fungicide, and Rodenticide Act. 15 U.S.C. §2602(2).

²⁷ See *supra* note 10.

²⁸ Pursuant to the Debt Collection Improvement Act of 1996, EPA periodically adjusts the maximum civil monetary penalties that can be imposed under the CWA, SDWA, and other statutes that it administers to account for inflation. Currently, the maximum inflation-adjusted civil penalty under CWA Section 309(d) or SDWA Section 1414(b) is \$37,500 per day for each violation. 40 C.F.R. Part 19.

only S. 1961 would require chemical storage tank programs to be administered and enforced in accordance with the underlying statute (SDWA).

Neither bill would provide additional funds to states to support development or administration of the program called for in the legislation. Requirements, such as conducting periodic inspections of chemical storage facilities, may be a challenge for resource-limited states without supplemental funding or shifting of funds from other activities to support program needs. Options for funding state-administered programs in the past have included authorizing appropriations for state grants, and providing explicit authority to support program costs through fees.²⁹ Likewise, S. 1961 does not consider the resources that EPA might need if a large number of primacy states refrain from implementing the program contemplated in the legislation.

It is unclear how many facilities might be covered under either bill, as there is no existing inventory—a gap that both bills propose to close by requiring each state to develop its own inventory (a national inventory is not called for in either bill). Although the number of chemical storage facilities and tanks is expected to be large, the bills give states and EPA considerable flexibility to determine which of those might be “covered” facilities or tanks or might be excluded from inclusion in the new program. Whether a state or EPA might choose to exclude some facilities or tanks—for example, those that are large, based on a determination that they already meet appropriate standards, or those that are small, based on a determination that they pose relatively little risk of harm to public water supplies—is unknown for now.

At congressional hearings and in other fora, some—including some state regulatory agencies—have expressed the view that federal legislative response to the Elk River chemical spill would be premature until more complete information about the incident is available and an assessment has been done of gaps in environmental laws and regulations and how best to address them—whether through amendment of laws and/or programs or enhancement of existing authorities.³⁰ Further, regardless of the role of states in the pending bills, some stakeholders prefer allowing states to take the lead in determining the need for and details of programs to address chemical storage facilities within their borders.³¹

The Administration’s views on the need for legislation to address spills from chemical storage facilities generally or on the specific bills discussed here are unknown for now.

²⁹ For example, the Clean Air Act, Section 502(b)(3), includes explicit authority for EPA or states to collect fees to support reasonable costs of administering the Title V program (all states administer this permitting program). As another example, under Subtitle I of the Solid Waste Disposal Act, states receive grants to support administration of the Underground Storage Tank leak prevention program and the Leaking Underground Storage Tank (LUST) response program. Congress established the LUST Trust Fund (based on a 0.1 cent/gallon motor fuels tax) initially to fund only the response program, and amended the program in 2005 to authorize use of trust fund resources (rather than general Treasury revenues alone) for inspections and other leak prevention activities. As a state example, the newly enacted West Virginia aboveground storage tank law authorizes fees on tank owners to fund inspections and a registry. See *infra* note 31.

³⁰ Letter from Dick Pederson, president, Environmental Council of the States, Ryan Benefield, president, Association of State and Territorial Solid Waste Management Officials, and John Calkins, president, Association of Safe Drinking Water Administrators, et al. to Honorable Barbara Boxer, Honorable David Vitter, Honorable Joe Manchin, Honorable Jay Rockefeller, March 5, 2014.

³¹ For example, in response to the Elk River chemical spill, the West Virginia governor signed a bill (S.B. 373) on April 1, 2014, to establish new aboveground storage tank requirements, including regular inspections and stricter permitting, and to improve coordination between state and local officials and water utilities. Fees on tank owners would fund inspections and a registry. Similarly, the Georgia legislature passed a bill (H.B. 549) in March to establish emergency response procedures in case of a hazardous chemical spill into a water supply.

Appendix. Comparison of S. 1961 and H.R. 4024

Table A-I. Comparison of S. 1961 and H.R. 4024

Provision	S. 1961, as reported	H.R. 4024
Title	Chemical Safety and Drinking Water Protection Act of 2014	Ensuring Access to Clean Water Act of 2014
Statute to be amended	Safe Drinking Water Act (SDWA) 42 U.S.C. §300f et seq.	Federal Water Pollution Control Act (hereinafter referred to as the Clean Water Act (CWA)); 33 U.S.C. §1251 et seq.
	Section 2 adds SDWA Part G (§§1471-1476)—Protection of Surface Water from Contamination by Chemical Storage Tanks.	Section 2 adds CWA Title VII—Protection of Navigable Water from Contamination by Chemical Storage Facilities.
Definition: Chemical	Section 1471(1). Defines “chemical” to mean a chemical substance that is (A) identified as a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund); (B) subject to emergency planning or reporting requirements of the Emergency Planning and Community Right-To-Know Act (EPCRA); ^a or (C) defined as a contaminant under SDWA Section 1401(6).	§701(3). Defines “chemical” to mean any substance or mixture of substances.
Definition: Storage tank	§1471(2). Defines “covered chemical storage tank” to mean an onshore, fixed, above-ground bulk chemical storage container (including any associated piping and appurtenances), or a combination of such storage containers, from which a release of the chemical from the tank and/or containers could pose a risk of harm to a public water system. Excludes tanks or containers subject to Spill Prevention, Control and Containment (SPCC) requirements to prevent and contain discharges of hazardous substances under CWA Section 311(j)(1)(C) [SPCC rules for hazardous substances have been issued for oil but not for hazardous substances ^b]. EPA or the state also may adopt exclusions <ul style="list-style-type: none"> based on federal or state laws and regulations that substantially meet the requirements of this act; or for tanks that EPA or the state determines would not pose a risk of harm to a public water system 	New §701(1). Defines “aboveground storage tank” to mean any container or set of containers designed to contain fluids located at a covered chemical storage facility, constructed of materials including concrete, steel, plastic or fiberglass reinforced plastic and located on or above the ground surface. Excludes <ul style="list-style-type: none"> [similar SPCC exclusion for chemical storage facilities (see definition below)]; tanks of 1,100 gallons or less capacity except tanks greater than 500 gallons capacity within 500 feet of a navigable water designated for use as a domestic water supply; tanks subject to oversight and inspection under a federal or state law or regulation determined by EPA or state to be at least as stringent as requirements in Section 702 (below); [for covered chemical storage facilities, EPA or state may consider requirements of applicable federal or state laws and regulations in determining risk of harm].

Provision	S. 1961, as reported	H.R. 4024
Definition: covered chemical storage facility	<p>As reported, the Senate bill addresses chemical storage tanks, rather than chemical storage facilities, as introduced.</p> <p>Similar language in definition of “covered chemical storage tank” above.</p> <p>Same exclusion under definition of “covered chemical storage tank.”</p> <p>Broadly comparable exclusion under definition for covered tanks.</p>	<p>§701(3). A facility at which a chemical is stored and EPA or the state determines that a release poses a risk of harm to a navigable water designated for use as a domestic water supply under CWA Section 303.</p> <p>Excludes facilities subject to Spill Prevention, Control and Containment (SPCC) requirements to prevent and contain discharges of hazardous substances under CWA Section 311(j)(1)(C) [SPCC rules for hazardous substances have been issued for oil but not for hazardous substances^b].</p> <p>Consideration: in determining risk of harm, EPA or state may consider requirements of applicable federal or state laws and regulations.</p>
Definition: state program	§1471(2). “State program” means a chemical storage tank source water protection (CSTSWP) program established under Section 1472.	§701(4). “State program” means a chemical storage facility source water protection (CSFSWP) program established under Section 702.
Establishment of state programs	§1472(a). No later than 2 years after enactment, EPA, or each state exercising primary enforcement for public water systems, shall carry out, directly or through delegation, a CSTSWP program for protection of public water systems from a release of a chemical from a covered chemical storage tank.	§702(a). No later than one year after enactment, EPA, or each state exercising primary enforcement responsibility for issuing CWA discharge permits, shall carry out directly or through delegation, a CSFSWP program for the protection of navigable water designated for use as a domestic water source under CWA Section 303 from a release from a covered chemical storage facility.
Program requirements	§1472(b)(1). A state program must provide for oversight and inspection of each covered storage tank in accordance with specified requirements to prevent release of chemical into surface water supplies of public water systems, including a covered tank located in a source water area identified under SDWA Section 1453.	§702(b)(1). A state program must provide for oversight and inspection of each covered storage facility in accordance with specified requirements to prevent the release of chemicals into a navigable water designated for use as a domestic water source under CWA Section 303.
Required program elements	<p>§1472(b)(2). Minimum program requirements must include</p> <p>(1) Requirements for “covered chemical storage tanks” including appropriate standards for design, construction, and maintenance, leak detection, spill and overflow control, inventory control <i>for promptly determining the quantity of chemicals released in the event of a spill</i>; an emergency response and communication plan <i>including procedures for immediately notifying potentially impacted water systems, and other entities required by EPCRA</i>^b; training and safety plan; tank integrity inspections <i>consistent with appropriate standards</i>; corrosion protection; and financial responsibility requirements.</p>	<p>§702(b)(2). Minimum program requirements</p> <p>(1) Generally similar requirements for “covered chemical storage facilities” excluding text in italics.</p> <p>[The Senate bill identifies more options for demonstrating financial responsibility.]</p>

Provision	S. 1961, as reported	H.R. 4024
	<p>Requirements for tanks also must include notice to EPA and appropriate state agency of (a) <i>existing information</i> on the potential toxicity of stored chemicals <i>that EPA or the state determines is relevant to evaluate the risk of harm to water systems</i>, and (b) safeguards to detect or mitigate effects of a release.</p> <p>(2) Inspections of covered chemical storage tanks required as follows:</p> <ul style="list-style-type: none"> • high hazard tanks, annually by a certified inspector for the owner or operator; • covered tanks in SDWA source water assessment areas, at least every three years by EPA or the state; • other covered storage tanks, at least every five years. <p>(3) A comprehensive inventory of covered facilities in the state.</p>	<p>Similar provision, except notice must also be given to applicable public water systems on navigable water designated for use as a domestic water supply. [Under S. 1961, states or EPA must make information available to public water systems, on request. See entry below on “Information sharing.”]</p> <p>(2) Inspections of aboveground storage tanks at covered facilities required as follows:</p> <ul style="list-style-type: none"> • no similar provision; • covered facilities identified in SDWA source water assessment areas, at least every three years; • other covered chemical storage facilities, at least every five years. <p>(3) Same provision.</p>
High hazard tanks	<p>§1472(b)(3). By two years after enactment, EPA or the state, as applicable, must develop a list of covered tanks that, in the event of a release, would pose the greatest risk of harm to public water systems and risk to public health.</p> <p>[As noted above, owners or operators must have these tanks inspected annually.]</p>	No similar provision.
Existing standards	§1472(c). In setting mandatory program requirements, EPA or a state may, by reference, include (1) appropriate requirements under state or federal law and regulations, and (2) consensus standards.	No similar provision.
Enforcement, implementation, and penalties	<p>§1472(d). For purposes of primary enforcement responsibility, a program and any requirements under Part G [added by this bill] shall be</p> <p>(1) considered part of the national primary drinking water regulations established under SDWA Section 1412; and</p> <p>(2) implemented and enforced in accordance with SDWA. [This includes, for example, Section 1413 (state primary enforcement and program administration requirements), Section 1414 (EPA enforcement in primacy and nonprimacy states), Section 1449 (citizen civil suits), and Section 1450 (EPA regulatory authority).]</p>	<p>No similar provision.</p> <p>The Clean Water Act also includes general regulatory authority for EPA.</p>

Provision	S. 1961, as reported	H.R. 4024
Civil penalties	<p>In addition to Section 1472(d) requirements, Section 2(c) contains conforming amendments to SDWA Section 1414 (EPA enforcement), including Section 1414(b).</p> <p>[Existing SDWA Section 1414(b) authorizes EPA to bring a civil action in the appropriate U.S. district court to require compliance with any applicable SDWA requirement or an order. Civil penalties may not exceed \$25,000 for each day the violation occurs. (See also civil penalty provisions in SDWA Sections 1414(g) and 1445(g).)]</p>	<p>§707. Any person owning or operating a covered facility who violates any applicable requirements or refuses to comply with an order issued by EPA or the state under this title may, in an action brought in the appropriate U.S. district court, be subject to a civil penalty not to exceed \$15,000 for each day the violation occurs.</p>
Administration	<p>§1472(e). A state program shall be carried out by</p> <ul style="list-style-type: none"> states that have primary enforcement responsibility for public water systems (primacy); or by EPA if either (A) a state does not have primacy, or (B) a state has primacy but expressly refrains from administering and implementing a CSTSWP program. 	<p>§702(c). A state program shall be carried out by states that have primary enforcement responsibility for issuing CWA discharge permits, or otherwise, by EPA.</p>
Notification to EPA	<p>§1472(f). A state must notify EPA not later than two years after enactment, if the state has SDWA primacy but refrains from establishing a CSTSWP program.</p>	<p>No similar provision.</p>
Effect on primacy for other programs	<p>§1472(g). The bill clarifies that a state's decision not to implement a CSTSWP program shall not affect primacy for other SDWA programs.</p>	<p>No similar provision.</p>
EPA guidance and technical assistance	<p>§1472(h). EPA is required to issue guidance and provide other technical assistance to states.</p>	<p>§702(e). Upon the request of a state, EPA may provide technical assistance.</p>
Corrective action orders	<p>§1473. EPA or the primacy state, as applicable, may issue an order to an owner or operator of a covered tank to carry out the requirements of this title.</p>	<p>Section 703(a) includes the same provision, except refers to an owner or operator of a facility, rather than a tank.</p>
Cost recovery	<p>§1474. An owner or operator of a covered chemical storage facility shall be liable for response costs if EPA or the primacy state incurs costs for undertaking a response action relating to the release of a chemical.</p>	<p>Section 704 includes a similar provision.</p>

Provision	S. 1961, as reported	H.R. 4024
Facility transfers	<p>§1475(a). Transfer of a covered tank is prohibited unless, prior to closing or completing the transfer,</p> <p>(1) The transferor must submit to the transferee the results of pre-transfer inspection. The inspection must meet requirements set by EPA or a state with primary enforcement responsibility.</p> <p>(2) One of the parties must agree to take measures to address the results of the inspection within 1 year after the tank is closed or transferred.</p> <p>§1475(b). Qualifying inspections must be carried out within 1 year before the tank is transferred and must satisfy pre-transfer inspection requirement.</p> <p>§1475(c). An inspection by a qualified engineer satisfies the requirement.</p> <p>§1475(d). The deadline for the next inspection of such tanks would be calculated from the date of the pre-transfer inspection.</p> <p>§1475(e). EPA or a state may extend the time period of the design and construction of the required appropriate measures cannot be completed during the allowed time period.</p>	<p>Section 705 includes similar provisions, except that</p> <p>(1) this provision addresses the transfer of a “facility” rather than a “tank”; and</p> <p>(2) measures to address the results of the inspection must be taken within 30 days after the facility is closed or transferred.</p> <p>No similar provisions.</p>
Information sharing: public water systems	<p>§1476(a). EPA or the state, as applicable, must provide public water systems, on request, information maintained by EPA or the state (in accordance with Section 1472(b)(2)) relating to</p> <p>(1) emergency response plans for covered tanks located in the same watershed as the water system;</p> <p>(2) an inventory of each chemical held at the covered chemical storage tanks;</p> <p>(3) existing information on the potential toxicity of stored chemicals that EPA or the state deems relevant to evaluate the risk of harm to water systems; and</p> <p>(4) safeguards that can be taken to detect, mitigate, or otherwise limit impacts of a release of stored chemicals.</p>	<p>Section 706(a) includes some similar provisions. EPA or the state, as applicable, must provide operators of water systems on navigable water designated for use as a domestic water source with information relating to</p> <p>(1) emergency response plans for covered facilities in the same watershed (as required under Section 702(b)(2)(A)); and</p> <p>(2) an inventory of each chemical held at the facility.</p> <p>(3) - (4) No similar provisions. However, under Section 702(b), facilities must provide similar information to water public water system operators.</p>
Emergency response plans	<p>§1476(b). If the state exercises primary enforcement responsibility, the response plans must be provided to EPA and the Department of Homeland Security (DHS).</p> <p>If EPA administers the program, EPA must provide a copy to the state and DHS.</p>	<p>§706(b). Same provision.</p> <p>No similar provision.</p>

Provision	S. 1961, as reported	H.R. 4024
Consistency	<p>§1476(b)(2). Emergency response plans should, to the extent possible, be integrated with applicable area contingency plans (ACPs) under Clean Water Act Section 311(j)(4); 33 U.S.C. 1321(j)(4).</p> <p>[This CWA provision, implemented through the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), requires Area Committees to prepare ACPs to support Regional Response Teams in preparing for responses to discharges of oil or hazardous substances to U.S. waters.^{d]}</p>	No similar provision.
Information sharing: confidentiality	<p>§1476(c). Requires EPA or the state, as applicable, to keep confidential information that EPA or the state deems to be sensitive or to present a security risk to a facility. However, confidentiality shall not apply to (1) public health information, or (2) information required to be disclosed under EPCRA or other requirement under any law (including regulations), or prevent information sharing with EPA, DHS, a public water system, or public agency involved in emergency response.</p>	<p>§706(c). EPA or the state, as applicable, may keep confidential information that EPA or the state deems to be sensitive or to present a security risk to a facility. However, confidentiality shall not apply to public health information or prevent information sharing with EPA, DHS, a public water system, or public agency involved in emergency response.</p>
Best practices survey and report	No similar provision.	<p>§702(f). EPA, within 18 months of enactment, shall prepare a report that surveys state oversight and inspection programs provided for herein and implementing regulations in each state. EPA must provide the report to committees of jurisdiction and states, and post the report on the EPA website.</p>
Emergency powers: petitions	<p>§2(b). Owners or operators of public water systems are authorized to</p> <p>(1) commence a civil action for equitable relief, including restraining orders or permanent or temporary injunctions, to address any activities or facilities that may present an imminent and substantial endangerment to the health of persons served by the water system; or</p> <p>(2) petition EPA or the state to issue an order or commence a civil action.</p> <p>Within 30 days of receiving a petition, EPA must respond and initiate such action as the Administrator deems appropriate.</p> <p>If the petition is in response to an emergency, EPA must respond within 72 hours.</p> <p>[Amends SDWA Section 1431.]</p>	Section 703(b) includes the same provisions.

Provision	S. 1961, as reported	H.R. 4024
Right to adopt more stringent requirements	<p>§2(c). Existing authority in SDWA Section 1414(e) provides that nothing in this title (i.e., SDWA) shall diminish the authority of a state or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems.</p> <p>Section 2(c)(1) amends Section 1414(e) specifically to add laws and regulations governing chemical storage tanks.</p>	§702(d). Nothing in this title shall preclude or deny the right of any state, political subdivision, or interstate agency to adopt or enforce standards for oversight and inspection of covered facilities that are more stringent than the minimum requirements in this section.
EPA enforcement: conforming amendments	<p>Section 2(c)(1) amends SDWA Section 1414(a), (b), (e), (f) and (g), Enforcement of Drinking Water Regulations, to add after “public water system” and after “public water systems” each place they appear in specified subsections “or a covered chemical storage tank.”</p> <p>Section 2(c)(2) amends Section 1414(i) to include Part G in the definition of “applicable requirement” and to add the term “covered chemical storage tank.”</p>	No similar provision.

Source: Prepared by the Congressional Research Service.

- a. The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 establishes various planning and reporting requirements applicable to facilities at which certain hazardous chemicals or extremely hazardous substances are present above specific threshold quantities. For purposes of EPCRA, “hazardous chemicals” are the body of chemicals that meet the regulatory criteria promulgated by the Occupational Safety and Health Administration in 29 C.F.R. Section 1910.1200(c), and extremely hazardous substances are a separate body of specific chemicals designated in regulation promulgated by EPA in 40 C.F.R. Part 355, Appendix A and Appendix B. EPA is responsible for designating threshold quantities under EPCRA for both hazardous chemicals and extremely hazardous substances.
- b. Clean Water Act, Section 311(j)(1) [33 U.S.C. 1321(j)(1)], directs the President to promulgate spill prevention, containment, and removal regulations for discharges of oil and hazardous substances to surface waters. An executive order delegated this authority to EPA, which issued oil Spill Prevention, Control, and Countermeasure (SPCC) regulations in 1973. EPA has not issued analogous regulations that apply to hazardous substances. In addition, Section 311(j)(5) directs the President to issue regulations requiring tank vessel and facility owners or operators to prepare and submit detailed response plans for responding to worst-case discharges of oil or a hazardous substance. Facilities subject to regulations include onshore facilities that, because of their location, could “cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.” Another executive order delegated this authority to EPA, which promulgated Facility Response Plan regulations for non-transportation onshore oil facilities in 1994. EPA has not issued similar regulations for facilities storing hazardous substances. Although both of these CWA sections direct the President to issue rules that address hazardous substances, if EPA had issued such regulations, they would apply only to materials defined as hazardous substances, which currently do not include MCHM.
- c. The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 requires the owner or operator of a facility to notify state and local emergency response officials (and local fire departments) of certain hazardous chemicals present at the facility above specific quantities. EPCRA also requires notification of state and local emergency response officials in the event of a release from the facility of certain designated chemicals above specific quantities.
- d. For further discussion, see CRS Report R43251, *Oil and Chemical Spills: Federal Emergency Response Framework*, by David M. Bearden and Jonathan L. Ramseur.

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